



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD-2020-HA-0073]

RIN 0720-AB79

TRICARE Program: TRICARE Reserve Select Coverage for Members of the Selected Reserve

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule implements the National Defense Authorization Act for Fiscal Year 2020 (NDAA-2020), which removes the permanent eligible exclusion for TRICARE Reserve Select (TRS) coverage for a member of the Selected Reserve of the Ready Reserve who is enrolled or eligible to enroll in a Federal Employees Health Benefits (FEHB) Program health insurance plan. The law now excludes TRS coverage for such members only during the period preceding January 1, 2030. The law was effective upon enactment of NDAA-2020 on December 20, 2019. In implementing the statutory changes, this final rule will improve TRICARE by increasing options for access to care for Federal employees.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Schneider, Defense Health Agency, TRICARE Health Plan, TRICARE Policy and Programs Section, jeremy.m.schneider.civ@mail.mil, (703) 275-6208.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

This rule is required to implement section 701 of NDAA-2020. As a “housekeeping” matter, this rule includes necessary changes to the TRICARE regulation to conform it to the new statutory requirements enacted in the NDAA-2020, over which the Department has no administrative discretion. In implementing section 701 of NDAA-2020, this rule advances the better care component of the Military Health System’s aims by expanding the options available to Federal employees.

B. Exception to Notice and Comment

Agency informal rule-making is governed by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* Section 553(b) requires that, unless the rule falls within one of the enumerated exemptions, an agency must publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments, prior to finalization of regulatory requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for “good cause,” finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. Section 553 also requires an agency to include an explanation of such good cause with the publication of the rule.

As noted in the preamble, the change in law was effective upon enactment on December 20, 2019. The change in law is self-executing and Department of Defense (DoD) has no discretion for implementing the law, including amending the TRICARE regulation to conform it to the statutory requirements. Because DoD cannot change the law, it is impracticable and unnecessary to delay amending the TRICARE regulation to conform it to the law until a full public notice-and-comment process is completed. In addition, it would be contrary to public interest to retain in existence a TRICARE regulation relied upon by the public which contains an eligibility requirement which is legally inconsistent with the controlling legislation for TRS coverage pending completion of a full public notice-and-comment process. Pursuant to 5 U.S.C. 553(b)(B), and for reasons stated in this preamble, the Assistant Secretary of Defense for Health

Affairs (ASD(HA)), therefore, concludes that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule.

C. Summary of Major Provisions

The rule amends the TRICARE regulation to conform it to the current law that defines eligibility for TRICARE Reserve Select, specifying that Selected Reserve members eligible for or enrolled in a Federal Employee Health Benefits (FEHB) plan (5 U.S.C. Chapter 89, “Health Insurance”) are eligible to enroll in TRS beginning January 1, 2030.

D. Legal Authority for this Program

The statutory authority for this final rule is 10 U.S.C. 1076d, as amended by Public Law 116-92, NDAA-2020, Section 701, “Modification of Eligibility for TRICARE Reserve Select for Certain Members of the Selected Reserve.” This final rule amends title 32, Code of Federal Regulations (CFR), § 199.24, “TRICARE Reserve Select,” which offers the TRICARE Select self-managed, preferred-provider network option and can be found at https://www.ecfr.gov/cgi-bin/textidx?SID=2e53e1af44c38aa7d9076c076a2acd02&mc=true&node=se32.2.199_124&rgn=div8. The TRICARE Reserve Select program is established under 10 U.S.C. 1076d, “TRICARE program: TRICARE Reserve Select coverage for members of the Selected Reserve.”

II. Regulatory History

This final rule is the only regulatory action relating to implementation of section 701 of NDAA-2020.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “non-significant regulatory action,” although, not determined to be economically significant, under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. This rule is not economically significant as its effect on the economy is less than \$100 million, will not materially adversely affect the economy, a sector of the economy; productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Net benefit is supported by the Defense Health Agency’s mission of complying with all NDAA constraints and providing the best health care options to beneficiaries.

b. Summary

This rule amends the current TRICARE regulation which, consistent with 10 U.S.C. 1076d prior to NDAA-2020 amendment, excluded from TRS eligibility any Selected Reserve member who was also enrolled in, or eligible for a health benefit plan under the Federal Employee Health Benefits program under 5 U.S.C. chapter 89, section 8903. According to NDAA-2020, this exclusion will be repealed and these government employees will be eligible for coverage under TRS beginning January 1, 2030, provided they meet all other TRS eligibility requirements.

c. Affected Population

This rulemaking action will apply to an employee of the Federal Government who, under 5 U.S.C. chapter 89, is eligible for the Federal Employee Health Benefit Program and eligible for TRS as described by 32 CFR 199.24(b), “Qualifications for TRICARE Reserve Select coverage”. These specific beneficiaries will have the option to enroll in TRS beginning January 1, 2030. This enrollment will be voluntary, and will proceed through established enrollment procedures. The affected population will receive notification of this rule change via publication

of this final rule and by TRS program literature published by the Defense Health Agency and distributed by TRICARE regional managed care support contractors.

d. Costs

The Future Years Defense Program (FYDP) only projects five years into the future, thus, an accurate estimate of monetary cost to the government cannot be done. Projections templated over FY2020 through FY2025 project cost savings to the DoD in excess of \$10 million per fiscal year (FY). This net takes into consideration the revenue lost through fewer Federal Employees Health FEHB Program plan premium contributions and assumes that approximately 33% of employees eligible to switch from their current FEHB Program plan to TRS will do so. Again, these projections are for FY2020-FY2025, and this rule is not to be implemented until calendar year 2030.

The administrative costs of this rule are assessed as only including increased customer service queries and beneficiary education required to ensure beneficiaries have all the necessary information to make an informed decision. Administrative processes to manage plan changes triggered by this rule are already in place.

There is no projected cost to the public. Should they decide to change health plans, employees affected by this rule may experience cost savings due to lower premiums, catastrophic cap, deductible, and other cost shares. However, these savings are subject to plan specifics at the time of rule implementation.

e. Benefits

Extending TRS eligibility to Federal employees increases health care options for beneficiaries, especially through the preferred-provider network (PPN). Depending on their health care needs, the PPN provided by TRS may increase access to care for eligible Federal employees who choose to enroll. The projected monetary cost saving to the government, still to be itemized, is the final important benefit; this rulemaking action frees up Government funds for appropriate reallocation.

f. Alternatives

Alternative 1: No action. Not implementing this rule would be in direct violation of the law set forth in NDAA-2020 requiring TRS to be an option for eligible Federal employees who desire to enroll in TRS coverage beginning January 1, 2030. The result of taking no action would be continued cost to the government in the form of FEHB plans that could have been transferred to TRS beginning in CY2030. Cost to beneficiaries would be the loss of additional coverage options and likely increased health care out-of-pocket costs. There is no benefit to taking no action and the Department has no discretion to forgo compliance with the law requiring this rulemaking action.

Alternative 2: Postponed action. Postponement of rulemaking would result in inconsistency between the TRICARE regulation and the controlling statute. The statute is self-executing and was effective upon enactment of NDAA-2020 on December 20, 2019. Delaying rulemaking to conform the regulation with the law will result in inaccurate information available to the public regarding statutory eligibility for TRS coverage.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule

cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

D. Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This final rule will not mandate any requirements for State, local, or tribal governments, nor will affect private sector costs.

E. Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that 32 CFR 199.24 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. Existing information collection requirements of the TRICARE program will be utilized, using a DD Form 2896-1, Reserve Component Health Coverage Request Form. This enrollment form, accessible through the Beneficiary Web Enrollment (BWE) website, does not meet information collection requirements and thus does not trigger requirements of the Paperwork Reduction Act.

F. Executive Order 13132, “Federalism”

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Amend §199.24 by revising paragraph (b)(1) introductory text to read as follows:

§ 199.24 TRICARE Reserve Select.

* * * * *

(b) * * *

(1) *Ready Reserve member.* A Ready Reserve member qualifies to purchase TRICARE Reserve Select coverage prior to January 1, 2030, if the Service member meets the criteria listed in both paragraphs (b)(1)(i) and (ii) of this section. Beginning January 1, 2030, only the criteria in paragraph (b)(1)(i) of this section is necessary for qualification.

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Dated: November 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.